

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

EXTANG CORPORATION,)	
UNDERCOVER, INC. and LAURMARK)	
ENTERPRISES, INC. d/b/a BAK)	
INDUSTRIES,)	
)	
Plaintiff,)	C. A. No. 1:19-00923 (MN)
)	
v.)	
)	
TRUCK ACCESSORIES GROUP, LLC d/b/a)	
LEER, INC.,)	
)	
Defendant.)	
)	

JOINT CLAIM CONSTRUCTION CHART

Plaintiffs Extang Corporation, Undercover, Inc., and Laurmark Enterprises, Inc. d/b/a BAK Industries (“Plaintiffs”) and Defendant Truck Accessories Group, LLC d/b/a LEER, Inc. (“Defendant”) submit the following Joint Claim Construction Chart according to the Court’s Scheduling Order. *See* D.I. 14, ¶ 11 as amended by D.I. 27.

The chart identifies the terms and phrases at issue and the parties’ respective proposed constructions, with citations to the intrinsic record in support. A copy of the asserted patents and the intrinsic record relied on are being submitted herewith.

Each party reserves the right to rely on portions of the intrinsic record cited by the other party in the Joint Claim Construction Chart. Each party further reserves the right to rely on additional intrinsic evidence in the event necessary to rebut evidence and arguments made by the other party.

No.	Claim Term	Plaintiff's Proposed Construction	Plaintiff's Intrinsic Evidence	Defendant's Proposed Construction	Defendant's Intrinsic Evidence
1.	The forward section has a single-component construction between the front edge and the rear edge of the front section that is defined by the unitary extruded panel. (’358 Patent, claim 1)	Plain and ordinary meaning, If a construction is required, a “ forward section has a single-component construction is, “the front-most section of the covering over the cargo box is an integrated part, as opposed to having a distinguishable central panel supported by frame member(s).”	<u>’358 Patent</u> ’358 Patent at Fig. 5; 4:1-15; 5:22-56; 6:1-19. ’358 Patent File History at EULLEER0001579, 1584-85.	“The forward section is constructed of a unitary or single extruded panel only, with no other components between the front and rear edge, in contrast to the ‘multi-component construction’ of the rear sections.”	<u>’358 Patent</u> ’358 Patent at 2: 38-39; 4: 5-7; 4: 35-36; 6: 1-19; 3: 6-13; and Figs. 1, 3, and 6. ’358 Patent File History at EULLEER0001585 and EULLEER0001563.
2.	an internal rib is positioned internally between the outer walls and . . . comprises a coupling	Plain and ordinary meaning.	<u>’358 Patent</u> ’358 Patent at Abstract; 2:7-8; 2:10-13; 5:3-21; 5:34-43; Fig. 6 at 70; Fig. 7 at 70; 6:20-7:34; 8:12-17 (claim 4); 8:47-54	“a bolt hole integrally formed within the extruded panel”	<u>’358 Patent</u> ’358 Patent at 5:3-16; 5:22-28; and FIGs. 5 and 6.

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	aperture (^{'358} Patent, claim 11)		(claim 11)		
3.	to support (^{'073} Patent, claim 1)	"loosely suspended without user support"	<u>^{'073} Patent</u> ^{'073} Patent at 6:24-51; 6:63-67	Plain and ordinary meaning: to hold up	<u>^{'073} Patent</u> ^{'073} Patent at Claim 1; ^{'073} Patent at 5: 63-67.
4.	"a clamp being positionable in a clamping position operable to couple said support frame to the sidewall of the cargo box and an unclamping	"the clamp being movable along the support frame so that it can be in one place when clamped, and another when unclamped."	<u>^{'073} Patent</u> ^{'073} Patent at 6:22-51; 7:8-15	"The clamp may be either closed or open."	<u>^{'073} Patent</u> ^{'073} Patent at FIG. 2; ^{'073} Patent at 5:57-59; 6:22-30; 6:40-45.

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	position disengaged from the sidewall of the cargo box” (’073 Patent, claims 1 and 6)				
5.	a support frame (’073 Patent, claims 1 and 6)	A support frame is a “structural component that supports/bears up or couples a tonneau cover to cargo box.”	<u>’073 Patent</u> ’073 Patent File History at EULLEER0000146-166, 173-208, and 224-236. <i>See also</i> U.S. Patent No. 6,752,449.	“a front frame rail, rear frame rail, left side frame rail, and right side frame rail that surround the cargo box”	<u>’073 Patent</u> ’073 Patent at FIG. 1; ’073 Patent at 4:39-47.
6.	resilient hinge strip (’264 Patent claims 1, 11)	Plain and ordinary meaning. If a construction is required, a “ resilient hinge strip ” is “a strip at the joint comprised of material that is capable of	<u>’264 Patent</u> ’264 Patent at 1:47-50; 3:35-55; 4:38-5:4; 8:12-15.	“an elongated, narrow hinge made of flexible material”	<u>’264 Patent</u> ’264 Patent at Claims 8, 17; Abstract; FIGs. 1, 2, 6-8, 12; ’264 Patent at 3:35-49; 3:56-62; 4:10-16; 4:38-41.

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		recovering original shape after deformation.”			'264 Patent File History at 3/10/2008 Response to Office Action EULLEER0000630-646
7.	resilient connector (’264 Patent claim 25)	Plain and ordinary meaning. If a construction is required, “ resilient connector ” is “a connector comprised of material that is capable of recovering original shape after deformation.”	<u>’264 Patent</u> ’264 Patent at 3:35-55; 4:38-5:4	“an elongated, narrow hinge made of flexible material”	<u>’264 Patent</u> ’264 Patent at Claims 8, 17; Abstract; FIGs. 1, 2, 6-8, 12; ’264 Patent at 3:35-49; 3:56-62; 4:10-16; 4:38-41. ’264 Patent File History at 3/10/2008 Response to Office Action EULLEER0000630-646.

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8.	substantially flush with an upper surface of the cargo box ('264 Patent claim 9)	Plain and ordinary meaning. If a construction is required, “ Substantially flush with an upper surface of the cargo box ” means “substantially even or level with an upper surface of the cargo box.”	<u>'264 Patent</u> '264 Patent at Figs. 4 and 5; 6:42-46; 7:22-27; 9:16-19	“within a few millimeters of level with the top of the truck’s sidewalls”	<u>'264 Patent</u> '264 Patent at FIGs. 1, 4, 5; '264 Patent at 6:42-46; 6:53-58; 7:22-27 '264 Patent File History 10/28/2008 Claim Amendment and Remarks (EULLEER0000575-591); <i>id.</i> at 3/10/2008 Response to Office Action (EULLEER0000630-646).
9.	“with substantially each slam latch assembly including first and second plungers urged outwardly by first and second	Not indefinite- Plain and ordinary meaning. If a construction is required, a “ slam latch assembly ” is “a device on the bottom of each panel that includes first and second plungers urged outwardly by first and second	<u>'264 Patent</u> '264 Patent at Fig. 13; 1:52-54; 5:13-20; 6:11-12; 8:19-26.	The limitation “with substantially each slam latch assembly” having certain features is indefinite.	<u>'264 Patent</u> '264 Patent Claims 1, 20, 25; '264 Patent at FIG. 13 and 1:52-54; 5:13-29; 6:11-12; 6:16-41. '264 Patent File History at 10/28/2008 Claim Amendment and Remarks (EULLEER0000575-591).

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	springs” (’264 Patent claim 1)	springs used to hold or lock panels down in a closed position.”			
10.	release mechanism (’264 Patent claims 1)	Not § 112, paragraph 6. Plain and ordinary meaning. If a construction is required, a “ release mechanism ” is “a device to release the panel.”	<u>’264 Patent</u> ’264 Patent at Abstract, 5:23-29; 6:16-23; 8:27-32	This is a means plus function limitation. The function is releasing each panel from the first and second rails. The corresponding structure in the specification for releasing is: <ul style="list-style-type: none">a release cable that is pulled to move the first and second plungers of the latch assembly.	<u>’264 Patent</u> ’264 Patent at FIG. 13; ’264 Patent at 5:13-29; 6:11-12; 6:16-41. ’264 Patent File History at 10/28/2008 Claim Amendment and Remarks (EULLEER0000575-591); <i>id.</i> at 3/10/2008 Response to Office Action (EULEER0000630-646) <u>’021 Patent</u> ’021 Patent at FIGs 2, 13; ’021 Patent at Claims 1, 8, 11, 12, 14, 15, 18, 19, 24, 25, 31, 32,

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					Abstract, and at 1:59-61; 5:20-36; 6:18-48. '021 Patent File History at 12/1/2011 Response to Office Action (EULLEER0001114-35); 1/25/2012 Amendment after Final Rejection (EULLEER0001082-1090); <i>id.</i> at Notice of Allowance (EULLEER0001053-1066)
11.	latch and release assembly ('264 Patent claim 25)	Not means plus function. Plain and ordinary construction, if a construction is required, "a latch and release assembly " is "a device on the panels used to hold and release one or more of the panels onto the rails."	<u>'264 Patent</u> '264 Patent at Abstract, Fig. 13, 1:52-54; 5:13-29; 6:11-12; 6:16-23; 11:21-24	These are means plus function limitations. Functions: latching and releasing each panel from the first and second rails. The corresponding structure in the specification for latching is: <ul style="list-style-type: none">a latch housing containing two plungers and two springs located on the bottom surface of each of the first, second, and third panels.	<u>'264 Patent</u> '264 Patent at FIG. 13; '264 Patent at 5:13-29; 6:11-12; 6:16-41. '264 Patent File History at 10/28/2008 Claim Amendment and Remarks (EULLEER0000575-591); <i>id.</i> at 3/10/2008 Response to Office Action (EULEER0000630-646) <u>'021 Patent</u>

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				<p>The corresponding structure in the specification for releasing is:</p> <ul style="list-style-type: none"> a release cable that is pulled to move the first and second plungers of the latch assembly. 	<p>'021 Patent at FIGs 2, 13; '021 Patent at Claims 1, 8, 11, 12, 14, 15, 18, 19, 24, 25, 31, 32, Abstract, and at 1:59-61; 5:20-36; 6:18-48.</p> <p>'021 Patent File History at 12/1/2011 Response to Office Action (EULLEER0001114-35); 1/25/2012 Amendment after Final Rejection (EULLEER0001082-1090); <i>id.</i> at Notice of Allowance (EULLEER0001053-1066)</p>
12.	latch assembly ('021 Patent claim 31)	<p>Not a means plus function.</p> <p>Plain and ordinary meaning. If a construction is required, a “latch assembly” is “a device on the panels used to hold one or more of the panels onto the rails.”</p>	<p><u>'021 Patent</u></p> <p>'021 Patent at Abstract, Fig. 13; 1:59-63; 5:20-36; 6:24-30; 6:45-48.</p>	<p>This is a means plus function limitation.</p> <p>The function is latching each panel from the first and second rails.</p> <p>The corresponding structure in the specification for latching is:</p> <ul style="list-style-type: none"> a latch housing containing two plungers and two springs located 	<p><u>'264 Patent</u></p> <p>'264 Patent at FIG. 13; '264 Patent at 5:13-29; 6:11-12; 6:16-41.</p> <p>'264 Patent File History at 10/28/2008 Claim Amendment and Remarks (EULLEER0000575-591); <i>id.</i> at 3/10/2008 Response to Office Action (EULEER0000630-646)</p>

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				on the bottom surface of each of the first, second, and third panels.	<p><u>'021 Patent</u></p> <p>'021 Patent at FIGs 2, 13; '021 Patent at Claims 1, 8, 11, 12, 14, 15, 18, 19, 24, 25, 31, 32, Abstract, and at 1:59-61; 5:20-36; 6:18-48.</p> <p>'021 Patent File History at 12/1/2011 Response to Office Action (EULLEER0001114-35); 1/25/2012 Amendment after Final Rejection (EULLEER0001082-1090); <i>id.</i> at Notice of Allowance (EULLEER0001053-1066)</p>
13.	supported by the first and second rails ('021 Patent claim 31)	<p>Plain and ordinary meaning.</p> <p>If a construction is required, “Supported by” means, “bear all or part of the weight of; hold up.”</p>	<p><u>'021 Patent</u></p> <p>'021 Patent at Abstract; Figs. 2-5; 1:51-54; 2:64-3:31; 5:50-6:7; 6:49-59; 7:29-45.</p>	“the first and second rails, not the top of the truck’s sidewalls, hold up the cover”	<p><u>'021 Patent</u></p> <p>'021 Patent at FIGs 1, 4, 5; '021 Patent at Abstract; '021 Patent at 3:11-12; 3:23-24; 5:59:6:2; 6:49-53; 7:15-18:</p> <p>'264 Patent file history at 10/28/2008 Claim Amendment and Remarks</p>

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					(EULLEER0000575-591); <i>id.</i> at 3/10/2008 Response to Office Action (EULLEER0000630-646). '021 Patent File History at 12/1/2011 Claim Amendment and Remarks (EULLEER0001114-35).
14.	"spacer" ('021 Patent claim 31)	Plain and ordinary meaning. If a construction is required, a " spacer " is, "an object dimensioned to allow the panels to fold flat onto each other, without stressing the hinge joints."	<u>'021 Patent</u> '021 Patent at Fig. 2, 110, 112, 3:51-536:30-41.	"bar made of inflexible, inelastic material dimensioned wide enough for the panels to fold flat onto each other"	<u>'264 Patent</u> '264 Patent at Claim 17; '264 Patent at 3:35-49; 4:38-41 '264 Patent File History at 3/10/2008 Response to Office Action (EULLEER0000630-646); <i>id.</i> at 10/28/2008 Claim Amendment and Remarks (EULLEER0000575-591); <i>id.</i> at (EULEER0001064-1066). <u>'021 Patent</u> '021 Patent at FIG. 2, 9-11; '021 Patent at 3:41-55.

Respectfully submitted this 18th day of May, 2020.

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